



LAKES MANAGEMENT ADVISORY COMMITTEE

NH Lakes Management and Protection Program

New Hampshire Department of Environmental Services
29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
phone: 603-271-2959 fax: 603-271-7894
e-mail: jcolburn@des.state.nh.us



MEETING MINUTES September 22, 2006 Meeting DES Conference Room 9:30 a.m. - 1:00 p.m.

Members present:

Jim Haney, Ph.D., Chair
James S. Morash, Vice Chair
Wendell Berry
Joe Farrelly
Ken Gallager
Mark Hemmerlein
Ken Jordan
Mitchell E. Kalter
Johanna Lyons
Larry Sunderland
Rich Tichko

Representing:

Scientific Community, UNH
Tourism, NH Travel Council
NH Business and Industry Assn
NH Lakes Association
Office of Energy and Planning
Commissioner, DOT
NH Association of Realtors
NH Fish & Game Commission
Commissioner, DRED
Conservation Community
Exec. Dir., Fish & Game Dept.

Term:

August 22, 2007
August 1, 2007
July 8, 2007
August 1, 2006
Indefinite
Indefinite
June 27, 2008
August 22, 2006
Indefinite
September 19, 2007
Indefinite

Members not present:

Mark Gallagher
Marsha LaVallee Huntoon
Fred Murphy
Michele Tremblay
Kenneth P. Wilson
Vacant
Vacant

Commissioner, DOS
Conservation Commissions
Member, Planning Board
State Conservation Committee
NH Marine Trades Association
Elected Municipal Official
Commissioner, Agr. Markets and Food

Indefinite
August 22, 2007
August 1, 2008
August 1, 2006
August 22, 2008
August 22, 2003
Indefinite

Staff Present

Jacquie Colburn
Laura Weit
Darlene Forst
Paul Susca
Brandon Kernen
Lisa Fortier

Lakes Coordinator, Watershed Management Bureau
Asst. Planner, Watershed Management Bureau
Wetlands Bureau
Water Supply Engineering
Water Supply Protection
Executive Secretary, Watershed Management Bureau

Guest

Ann and Richard Corr
Steve Kahl
Allan Brooks

Property Owners Mascoma Lake
Plymouth State University
NH Attorney General's Office

The Meeting Was Called to Order

- Dr. Haney, Chairman, called the meeting to order at 9:37 a.m.

I. Introductions/Minutes/Committee Business

- 1) Meeting Minutes: July 28, 2006

- **Ken Jordan made a motion to accept the minutes as presented. Mitch Kalter seconded the motion and the vote was unanimous.**

2) Committee Business:

Member reappointments

Mitch Kalter has been reappointed to represent the Fish & Game Commission.

Jody Pellerin no longer represents the State Conservation Committee; Michele Tremblay is the new State Conservation Committee representative. Michele is unable to attend the next few meetings because of previous commitments.

Jody Pellerin would like to continue working with the Committee in some capacity. She has been pursuing the Municipal Association for nomination. However, the Municipal Association has a limited view on who can represent the Association.

Joe Farrelly's term has expired; he is in a holdover position until the NH Lakes Association appoints a new member.

Election for Vice Chair

- **Bud Berry made a motion to nominate Jim Morash for Vice-Chair. Joe Farrelly seconded the motion. The vote was unanimous.**

Travel Vouchers

Jacquie Colburn distributed travel vouchers to members eligible for reimbursement.

Stream Gage Task Force

Laura Weit provided the Committee with an update. The task force met for the last time in August. Wayne Ives, Instream Flow Specialist, compiled the report. The report assessed the existing NH stream gage network and identified potential new gages to the network. The report ranked the existing gages and encouraged legislators to find additional funds for the highest ranked gages. The lowest ranked gages were the Little River and Winnicut River gages, which are closing September 30th. If anyone would like copies of the report, please contact Laura.

- **Jacquie will ask Wayne Ives to come to the next meeting to give an update to the LMAC.**

Watershed Conference

The Watershed Conference, which is scheduled for Veteran's Day, is moving forward but may have to be rescheduled. This is the first time that it has fallen on the holiday itself. Jacquie advised people to go ahead and register and if it has to be rescheduled everyone who has registered will be notified.

North American Lake Management Society Meeting

This takes place in November in Indianapolis. Jody Connor, Amy Smagula, and Jacquie will be attending. Jacquie has been asked to do a presentation on the NH LMAC, its role and performance. Indiana is the only other state that has a statewide organization comparable to the Lakes Management Advisory Committee.

3) LMAC Meetings: 6/year with 1 lake visit

Meetings to Date: 7 (1/27/06, 2/24/06, 3/24/06, 4/28/06, 5/19/06; 6/23/06, 7/28/06, 9/22/06)

Next Meeting: October 27, 2006. The November and December meetings will be on the third Friday of those months.

4) State Agency/Member Updates

Jody Connor

The clarity of the lakes and ponds of NH was down this year. That information will probably be reflected in the VLAP and DES data once complete. The Beach Program monitors fifteen coastal beaches. There have been five coastal beach advisories this year, resulting in twenty-two closure days with no swimming. There were sixty-five freshwater beach advisories this summer and forty-two in 2005 because of high e-coli readings. The substantial increase in advisories are most likely the result of all the rainfall we have received. There were five advisories for Cyanobacteria in 2005 and twelve this year. The Lake Host Program had fifty-four saves last year. There were forty-six this year.

Darlene Forst

The Shoreland Protection Act Commission met this past Tuesday. The report is due November 30th. Several votes were put forward. Meeting four was dedicated to river related issues. The Commission voted to use UNH's database for stream ordering, which uses intermittent and perennial streams, instead of the current system, which only counts perennials. The new system, practically doubles the amount of river coverage protected under the Act - 7% to 13% river coverage. The Commission also voted to extend the current exemption to legitimate forestry and regulated agriculture that comply with BMP's for their industry. They recommended to remove the original designated river exemption for the Saco and Pemigewasset Rivers and that both rivers be brought under the full Shoreland Protection Act. They voted to recommend removal of all exceptions to the 50' primary building setback and to extend the Shoreland Protection Act to all third and fourth order streams. This will bring river mileage to 25% of the state.

At the next meeting, the Commission will consider whether the Act should be extended to include second order and higher streams.

A subcommittee developed a Woodland Buffer Proposal and the Commission will vote on it at the next meeting. The Commission has debated between a no-cut system and a point system like Maine's. There was a straw vote at a prior meeting and the Commission opted to use a point system. Since that time, the Commission has received additional information and heard expert testimony. Based on this new information the Commission has shifted its focus to recommending a no-cut zone with some sort of point system immediate behind the no-cut zone. A final decision must be reached by November 16th.

According to Darlene, the biggest issue in shoreland permitting is seasonal canopies. DES has received requests for very large canopies because boat houses are no longer allowed. Abutters do not want to see canopies.

Another issue is the development of wetlands adjacent to surface waters now that all the prime properties have been developed. DES has received eight requests this year for boardwalks connecting to docks. This sets up habitat fragmentation and allows predators easier access to the nests of other species. Perched beaches may also no longer be allowed.

A subcommittee has been formed to assemble the final report.

The LMAC asked Darlene a few questions and a short question and answer period followed.

Mark Hemmerlein

DOT has visited seventy sites this year around the southern part of the state for stormwater discharges under NPDES permits. They found quite a bit of e-coli this year. They have one study on Hampton Beach that they are actively working on retrofitting for stormwater treatment. There is also a large project on the DW Highway in Belmont that includes two very large stormwater treatment areas. This is the same area that the Committee visited during their lake

visit in July on Lake Winnisquam. DOT sent five surplus land requests over to the Long Range Capital Planning and Utilization Committee.

There were no other member reports.

- 5) Possible Future Agenda Items
SPNHF – New Hampshire's Changing Landscape
DES - Sprawl and Water Quality

II. Public Trust – Allen Brooks, Attorney General's Office

Attorney Brooks filled in for Jennifer Patterson. He discussed the origins of the public trust doctrine. The idea came from ancient Roman law which is different from due process. Due process comes from the constitution. In Roman law the concept is called Grace Communes, or owned by everyone. It included air, water, light, and everything not subject to private ownership. There is discussion as to whether the way we view the Roman law is true or not, since things are not always clear. Our laws come from English Common Law under which the king holds two estates underneath the navigable waters, Jus Pubicum and Jus Privatum. The king can give away Jus Privatum as he sees fit. Jus Pubicum is what the king holds in trusts for his subjects. The king can only do what is consistent with the purposes of why it is held in trust. This is similar to being the trustee of a trust. Public trust land is different than public, state-owned land. There is state owned land that can be given away and used for what the state wants to do. The English Common Law was accepted at the inception of the United States.

There are two different branches of law, statutory and judicial law. The public trust doctrine is a common law doctrine. The Central Illinois Railroad Land Giveaway is considered the seminal case in America for Public Trust Doctrine. Two concepts came out this case. In England the public trust was only tidal waters. America was considered different because it has very well defined inland waterways that England did not have, so the rule was expanded to include fresh water bodies. The other concept is that there are things that cannot or should not be done with public trust lands. The court was very specific in mentioning that people have a right to wharf out, to navigate, and public trust uses.

Although riparian landowners do have rights they are subject to regulation. The riparian landowner has more extensive rights than the public, but the landowner cannot extinguish the rights of the public. The rule of reasonableness also applies. At the inception of the United States the sovereignty passed from the king to the states. Each question about public trust use is state specific. Federal law has authority but does not hold the public trust. Attorney Brooks recommended a public trust doctrine book, "Putting the Public Trust to Work".

A short question and answer period followed.

- **Jacquie requested that someone from the Attorney General's Office return again in the future to answer additional questions.**

Jacquie also inquired about the formal opinion that the Attorney General's Office is working on. Allen Brooks suggested we write a nice letter to the Attorney General.

Dick and Ann Corr, property owners on Lake Mascoma and Derek Durbin from the NH Lakes Association joined the meeting at this time.

III. Impervious Surfaces and Water Quality – Steve Kahl, Plymouth State University Center for the Environment

Steve conducted lake research in Maine for twenty-five years before coming to NH. He worked for the Maine Department of Environmental Protection and the Maine Land Use Regulation

Commission (LARC). LARC is the planning board for the unorganized territory of Maine and they work on environmental protection policies for Maine. The goal is to take research and apply it to create policy that is acceptable to the general public. They want to use an incentive program to remediate past issues.

According to Steve, the best protection against degradation of lakes is shoreland buffer strips, minimal soil disturbance and minimal impervious surface. There have been numerous studies that have looked at the relationship between impervious surface, water chemistry and habitat. Below the 5% to 10% threshold range for impervious surface there doesn't seem to be a problem, but the problem accelerates when 10% or more of the watershed contains impervious surfaces. It is important to note that these studies have been conducted on streams and not on lakes.

It is hard to do this kind of analysis on a lake because they react too slowly. The range for a lake may be much lower than 5% to 10% because of the slower flushing rate. The question is: "Can we develop a policy that is based on science and not an arbitrary setback?" A 10% maximum impervious surface is a modest one. On one acre of land 4,356 square feet of land would be developable. Lawns are considered more impervious than a forested buffer with a wide variety of fauna. Under this formula a builder or owner may have to decrease the size of a lawn and plant a buffer strip or situate the house further back to meet the 10% impervious surface criteria.

Cumulative impact on the watershed also needs to be considered as well as economic issues. Lake front real estate is the golden goose, but short term profits shouldn't take precedent over the long range health of the lake. The Shoreland Protection Act is somewhat of a misnomer because the shoreline isn't really what we are protecting, it is the water quality. Some towns are going in collectively on code enforcement for water quality/shoreline issues. This has worked in Maine for years.

In terms of remediation, no cutting and no soil disturbance are allowed in the buffer zone. In Maine you can't cut anything under three feet tall, which includes lawns within 75 feet of the lake. In the Land Use Regulation Commission there was a discussion about how to permit the reconstruction of non-confirming docks. The law was rewritten so that you could have a non-confirming dock but you could only rebuild it to 90% of its former size. This mitigation results in small incremental gains in protecting the environment. Lawn care is another big issue. Many landscaping companies and owners are not aware that you are limited in fertilizer application near a lake. We need to do better public education on this issue.

Jim Haney – How do we get things to happen? Is the 10% limit realistic considering that one size may not fit all when considering soil type, slope and other factors? What do you suggest along those lines? How are we going to get a realistic number?

Steve Kahl – For lake watersheds in particular, tree types, soil type, and climate are factors. One of the things I was involved with was buffer strips in forestry operations. We can do studies forever and I don't think we will come up with a single number that fits all circumstances. We need to find something more scientifically defensible than 50' and decide what might be palatable, which the legislature will ultimately decide.

Joe Farrelly – The towns that are attuned to this issue are attempting to enforce or create legislation that stabilizes things as they are. All the current legislation is designed to do is keep the existing condition, not improve it.

Rich Tichko - What if an engineer says that they are going to put in a 6,000 square foot home and are going to put in two vegetative swales to treat all the sheet water and still want all the lawn. If you are able to treat the sheet water from impervious surfaces in some other format, how would you deal with that? It should improve the water quality. Does that still fit?

Steve Kahl – That is better than not doing anything. My first reaction is that the treatment swales are not typically as effective as other measures, but the good news is that the nutrients tend to run out and you get rid of them before they become permanent. That is certainly better than not doing anything at all.

IV. Surplus Land Reviews

1) Status of Letters/Requests & MOA

Jacque reviewed the status of letters and requests. We have not received a response from the Attorney General's Office. Jacquie will send another letter and make a few phone calls to encourage a response due to the upcoming legislative session.

Steve Couture, Jacquie Colburn, Ken Kimball, the Chair of the RMAC, and the LMAC surplus land review subcommittee will be meeting with the Governor on September 28th. The meeting is a result of a letter that was sent to the Governor last November, cosigned by Jim Haney and Ken Kimball and the LMAC position paper on surplus land disposal that was sent to the Governor in May.

Jacque asked Mark Hemmerlein about the last five surplus land reviews that had gone to the Long Range Capital Planning and Utilization Committee. Mark indicated that they were the last five that they had been reviewed by the LMAC. The Long Range Capital Planning and Utilization Committee specifically asked DOT to send the requests to them. Some of the requests went through CORD and Mark hoped CORD's letter support the LMAC decisions.

- **Mark Hemmerlein will forward any correspondence he receives from the Long Range Capital Planning and Utilization Committee relative to any surplus land review that the LMAC has reviewed.**

2) DOT SLR-06-001: Corr – Mascoma Lake - Reconsideration of March 2006 Decision

The Corr's request to revisit their March decision was tabled at the July meeting.

Jacque provided the Committee with a review of the events regarding the Corr's request to DOT. The Committee reviewed the original proposal at its March 24th meeting to lease 75 linear feet of lakefront along Mascoma Lake to allow access across an existing railroad recreation corridor for the construction and maintenance of a dock to access public waters. The Committee voted 5-4 to recommend against disposal. DOT sent a letter to Ann and Richard Corr informing them of the LMAC's decision relative to their request.

On June 22nd Ann Corr contacted Jacquie Colburn and requested the LMAC reconsider its decision. Jacquie invited Ann to speak at the July 28th meeting and Jacquie and Laura Weit conducted a site visit with Ann and Richard on July 19th.

At the July meeting, Jacquie provided the Committee with photos of the Corr's property and the lake and additional information collected since March. It was at this time the Corr's request to revisit the LMAC's March decision was tabled after much discussion.

The LMAC does not have a process in place regarding Requests for Reconsideration, but according to the DES Legal Unit, it does not need to have one in place to revisit a prior decision.

Jacque asked if there were any questions about the process before she asked the chairman to acknowledge Dick and Ann Corr and have the committee revisit their request.

- **Jim Haney, Chairman, asked Dick and Ann Corr if they would like to address the committee.**

Ann Corr – The reconsideration was requested because according to Ann, when they originally applied, they were told all requests were routinely approved. (It should be noted that this refers

to when CORD had more than just an advisory role.) Ann felt the LMAC's decision had been made with insufficient information, so she wanted to provide the Committee with additional information. The family who owned their home before them had a dock. The dock was probably installed in the 1950s or 1960s, prior to any docking regulations. Ann and Richard removed the old dock when they purchased the house, since it was falling apart. It was their understanding that they would be able to install a new dock by going through this process. Ann and Richard asked the Committee to consider the additional information and if they met all the criteria, to grant them permission to lease the land for the purpose of installing a dock on land abutting their property.

Larry Sunderland asked Ann Corr the amount of frontage they are seeking to lease. Ann Corr replied that 75' is required by the state. Jacquie informed Larry that 75' is the standard distance that DOT recommends people to ask for a dock.

- **Jim Morash motioned to take the reconsideration off the table. Ken Jordan seconded the motion. The vote was unanimous.**

- **Jim Haney invited a discussion of the reconsideration.**

Jim Morash commented that he had not changed his decision from the first time to approve the proposal. He feels that 75' on Mascoma Lake with a seasonal dock is not a problem. There have been issues that were brought up at the March meeting that have been resolved.

Joe Farrelly disagreed. He stated that he had not heard anything to alter his position from a technical perspective, which was the basis for his decision.

Ken Jordan stated that a motion to reconsider the decision needed to be brought forward by someone who participated in the original vote.

- **Jim Morash made the motion to readdress their previous March decision. Larry Sunderland seconded the motion. The vote was unanimous.**

Bud Berry asked if there was anything else the Committee should be made aware of. Jacquie didn't feel there was anything else that could be added that would affect this specific request.

Jim Haney asked Rich Tichko what Fish & Game's position was on the matter. Rich Tichko said their concern was with the loons, which had been cleared up, since Jacquie contacted the Loon Preservation Committee (LPC). John Cooley, staff biologist indicated that the LPC has recorded a territorial pair on Mascoma Lake since 2003. The pair nested and failed in 2003 and hatched one chick last year. The nest site has been between an island and a point of land about mid-way along the east shore of the main (southern) part of the lake.

Johanna Lyons was concerned that all the members were not there. Jacquie felt that only two voting members were absent and didn't think the vote should be put off again.

Ken Jordan stated that the majority of the voting body was there and a vote should be taken.

- **Jim Haney called for the vote to grant the Corr's request for a dock on Lake Mascoma. The motion was carried in favor six to one.**
- **Jacquie will prepare a letter for Jim Haney's signature that will be sent to DOT, with a cc to the Corrs. The letter will indicate that the committee has reheard its March decision and at the request of the Corrs has now voted six to one in favor of recommending the disposal. Jim Morash wanted it on the record that the decision was based on new information.**

V. Lakes Forum

1) Status of Action Items

Laura Weit provided the Committee with an update. All of the state agencies with the exception of the NH Fish and Game Department have responded to Commissioner Nolin's and Jim Haney's joint letter that was sent in July which requested each state agency as well as the NH Lakes Association to review the *Current and Critical Topics and Important Issues Discussed at the Lakes Forum*. LMPP staff compiled the information they received and prepared a spreadsheet to track progress for each of the action items that were presented at the February 2006 Lakes Forum. A color copy of the spreadsheet was distributed to those in attendance.

- **Joe Farrelly requested that Derek Durbin, Environmental Policy Director review the action items that NHLA brought forward at the Lakes Forum and submit priorities for each of those items as well as any additional information pertaining to actions underway, scheduled actions, and/or proposed actions that is not included.**

2) Schedule and Next Steps

Jacque and Laura will continue to track the progress of the action items and update the Committee on a regular basis.

Jacque distributed charts on conservation land in NH. One chart listed percentages, by county, of conservation land in NH within 250' of a lake, river, stream or pond. Belknap has the lowest percentage at 13% and Coos and Carroll Counties have the highest, at 30% and 31% respectively. The White Mountain National Forest is included in the percentages for Coos and Carroll counties.

The information was developed using the GRANIT GIS Conservation Layer and includes federal, state and privately owned land. The other chart listed conservation and public lands on Lake Winnisquam. LCHIP and SPNHF were contacted to determine if they had compiled similar information – they have not. The GRANIT Data Mapper was used to create the table.

Lake Winnisquam, at 4,000 acres, is the fourth largest lake in the state with 28 miles of shoreline. It was last tested by the state in 1994. The conservation lands include Chemung State Forest, Ahern State Park, Lochmere Dam, Bartlett Beach, Leslie E. Roberts Town Beach, Swain State Forest, and land owned by DRED, DOT, DES, and private conservation land. The chart is a first draft and the Sanbornton Town Beach was not figured into the percentages. Not all the conservation land has water frontage, such as the Swain State Forest. A study had been done by the state previously that recommended that Ahern State Park be sold, but the public was opposed. Jacque plans on doing this for Waukegan, Winnepesaukee and Paugus Bay to get an idea of the percentage of protected shoreline along our lakes.

- **At 12:00 pm the Committee broke for lunch.**
- **The meeting reconvened at 12:20 pm.**
- **Jim Morash, Vice Chair took over as Chair at 12:30 pm, because Jim Haney had to leave.**

VI. Other Items and/or Issues

1) Review and Discuss Lakes Management Criteria for NH State Agencies

In May, June, July, and August Laura Weit sent out several e-mails to committee members asking for input on the 1996 Lakes Management Criteria. This request, made by Alice Chamberlin, asked Jacque to ask the Committee what items haven't been addressed and could be fast-tracked. Five members responded and Laura they took their responses and created a spreadsheet.

Joe Farrelly asked how we proposed to implement them. Laura responded that the reasoning behind this was to take the recommendations back to Alice Chamberlain and ask for her input and advice on how to do that.

Mitch Kalter expressed concerns with going forward with only four responses from a 16 person committee.

Jim Morash stated that didn't feel he had the background to make a decision on the departments and their priorities.

Rich Tichko felt that he could not represent what everyone at Fish and Game believes, so he passed the decision on.

Ken Gallagher of OEP felt that OEP would support it.

Johanna Lyons felt that it aligns with the Lake Forum.

Mark Hemmerlein commented that the number one item from 1996 wasn't on the list and he felt that people needed to go back and give it some thought and that it should be placed on the agenda for the next meeting.

Mark also asked if there were items on the old list that are not represented on the new list. Laura informed the committee that there were 106 items identified in 1996 Lakes Management Criteria and 41 items from the Lakes Forum.

Jacque asked if they would like Laura to send the items to the committee again for ranking.

- **It was decided that Laura will send out the list again with a response due date of October 13th. Laura will then compile the results and send it out via email to the members with the additional meeting materials before October 27th.**

Anyone who responded the first time does not have to respond. Rich Tichko, Larry Sunderland, Ken Gallager, Bud Berry and Mitch Kalter do not have to respond.

- 2) LMPP/LMAC Statute Review and Priorities for 2006
Due to limited time, this agenda item was not addressed.

- 3) Possible legislation for the 06/07 session
The towns around Lake Winnepesaukee are holding a public hearing at Fish & Game on Monday to petition for a hearing to set speed limits. Joe Farrelly said he would be attending the Wind Fab Speed Limit Hearing at the Meredith Community Center at 10:00a.m on Monday the 25th.

Johanna Lyons said that another hearing has been added for the State Park Study committee on October 5th at 5:00 p.m. at the Peterborough Library. There is one more hearing and she has been to all three. Each region of the state has its own interests. The report has been out a while and there are findings and recommendations. There is a copy on the DRED website on www.nhstateparks.org. The comment period ends October 6th.

Jody Connor – The Legislative Milfoil Committee is in the process of looking through possible legislation. The milfoil sticker bill may be revived to fund milfoil projects.

- **Jim Morash brought forward a motion to adjourn. Ken Jordan seconded the motion. All were in favor.**